BRIEF IN SUPPORT OF PETITION

I.

PRELIMINARY STATEMENT

This brief is filed in support of the foregoing petition for writ of certiorari which prays that such writ be directed to the Supreme Court of the State of Michigan to review the final determination in that court, on June 30, 1943, wherein that court affirmed the decree of the trial court which dismissed plaintiffs' bill of complaint.

Petitioners herein were complainants (termed "plaintiffs" under Michigan Court Rules) in the trial court, and appellants in the Michigan Supreme Court. The decisions and opinion in the Michigan Supreme Court is found in *Fraternal Order of Police v. Lansing Board of Police and Fire Commissioners,* 306 Mich. 68. It occurs also in the printed record filed in this court, pages 67-78.

Opinions of trial courts are not published under the Michigan practice, but the opinion of the trial court occurs in the printed record, pages 45-51.

II.

STATEMENT OF FACTS

Petitioners herein, as plaintiffs, filed their bill of complaint (R. 5-13) in the Circuit Court for the County of Ingham, State of Michigan, November 26, 1941. The bill alleged that plaintiff, the Fraternal Order of Police is a Fraternal organization of persons engaged in police work, whether municipal, county, state, or federal, for the pur-

pose of promoting better fellowship, to encourage education and investigation and better police methods, and for the mutual protection and relief of police officers and their families.

Plaintiff Joseph Johnson Lodge, No. 102, is a subordinate lodge of the plaintiff Fraternal Order of Police, which latter was the State Lodge. Joseph Johnson Lodge was located in the City of Lansing in the County of Ingham. Both plaintiffs are non-profit corporations. There are twelve subordinate lodges in Michigan, in twenty-four cities.

The bill alleges the purposes of the state lodge as found in the preamble of the constitution as follows:

> "We, the members of the various Police Departments of this State (meaning the State of Michigan) convinced that it is to the best interests of our members, hereby unite under the name of the Fraternal Order of Police of Michigan, and believing that intelligence, industry and normal work are the true standards of greatness, do hereby pledge ourselves to use all honorable means to promote sociability and fraternity among the members of this Order."

Defendants were the Lansing City Police and Fire Commission and had, under the provisions of the Lansing City Charter, powers of supervision and control over the Police Department of that City.

The bill charges that on August 13th, 1941, defendants adopted the following resolution:

> "No superior officer of the Lansing Police Department shall be a member of the Fraternal Order of Police; further the Lansing Lodge shall confine its members to the Lansing Police Department and shall have no associate or honorary members."

It is further alleged that attempts were made on behalf of plaintiffs to procure revocation of this resolution, which failed, but that on the contrary, defendants threatened to discipline any members of the Police Department above the rank of sergeant who became or remained a member of the Order, either by discharge or other means.

On this showing, on February 21, 1942, the trial court rendered its opinion (R. 45-51), wherein it decided that the bill should be dismissed, and entered its decree accordingly February 20, 1942 (R. 52-53). A notice of appeal to the Supreme Court for the State of Michigan was duly filed (R. 63-65) in which court briefs were submitted on both sides and an oral argument had in behalf of defendants (R. 57). The reasons and grounds of appeal in that court as set forth in the record were as follows (R. 559):

> "1. The Court erred in denying plaintiffs' prayer for a permanent injunction.
>
> 2. That the Court erred in denying the plaintiffs relief so that the plaintiffs cannot establish Honorary memberships.
>
> 3. That the Court erred in denying the plaintiffs affirmative relief.
>
> 4. That the Court erred in determining that the charges set forth in plaintiffs' bill of complaint and answers filed thereto, were not sustained by the proof, and in refusing to grant plaintiffs affirmative relief. Such determination is against the preponderance of the evidence and is not sustained by any evidence produced at the trial."

The Supreme Court of Michigan rendered its opinion (R. 67-78), June 30, 1943, affirming the decision below and entered its order accordingly (R. 58). It is of this determination that a review is sought in this Court.

A motion for rehearing was filed in the Supreme Court of the State of Michigan on July 28, 1943 (R. 59-65) which was denied September 7, 1943 (R. 66-67). December 2, 1943, this Court by its order based on a petition filed on behalf of plaintiffs extended the time in which a petition for writ of certiorari might be filed up to and including February 5, 1944.

The bill charges, together with violations of certain provisions of the State Constitution, that this constitutes a threat to violate their rights under the Due Process and Equal Protection of the Laws clauses of the Fourteenth Amendment to the Constitution (R. 5-6, 9, 10, 11). By an amendment to the bill the act of defendants is designated as "arbitrary, and unreasonable" (R. 5-6). These contentions were orally argued in the trial court (R. 26).

The bill prays for injunctive relief, both in final decree and during the pendency of the suit.

An order to show cause (R. 14-15) as to why an injunction *pendente lite* should not be issued came on for hearing December 18, 1941. At this time, by consent of counsel (R. 27) the cause was heard on its merits. One witness was sworn for plaintiffs, and testified, and no witnesses were sworn on behalf of defendants.

The testimony showed that the Fraternal Order of Police is a National organization with head offices at Pittsburgh (R. 27-28) and with a Michigan State Charter for the State Lodge. Petitioner Joseph Johnson Lodge was a lodge subordinate to the State Lodge, located at Lansing (R. 28). The membership of the Order is made up of all regularly employed law enforcement officers, city, county, state or federal (R. 34). There are F. B. I. members (R. 34) and the F. B. I. cooperates with the Order (R. 38-39).

In Grand Rapids F. B. I. men have lectured to the Order on matters pertaining to alien and subversive activities (R. 39). Its purposes and objects, as stated in its constitution which was admitted into evidence, are as follows (R. 48):

> "Section 1. This organization is formed for the purpose of promoting personal and efficient coöperation between the police officers of the cities in these various states to the end that the public may be better served in the consideration of law and law enforcement.
>
> Section 2. Advancing social, charitable and educational undertakings among police.
>
> Section 3. To more effectively combat crime by unity and concerted action in all matters pertaining to law enforcement.
>
> Section 4. To promote the advancement of crime prevention and detection.
>
> Section 5. The Fraternal Order of Police denounces disloyalty and our oath of obligation binds us to our allegiance to these United States.
>
> Section 6. The Fraternal Order of Police stands for justice to humanity and for its rights, safety and development. We believe in the equality of all before the law.
>
> Section 7. We advocate the rigid enactment and enforcement of civil service laws for the police of the various states and nation.
>
> Section 8. The Fraternal Order of Police advocates and will work for the establishment of pension funds for the various cities of these States and Nation."

The Order functions in many ways along the line of law enforcement as for example, to combat child delinquency, and has also charitable activities (R. 28-29).

The witness related an instance of the activities of the Order in Grand Rapids, Michigan. There the police found an area of the City populated by negroes, where the annual arrests for juvenile delinquency were abnormally high in number, amounting to more than 225 (R. 29). The Local Lodge, in conjunction with associate members and the Chief of Police, who was a member, set up a "Young Commonwealth." The officers devoted their time and labor and a building was erected. There was equipment of a recreational nature for both girls and boys. A partially disabled police officer was placed in charge. In one year the arrests in the particular area were reduced to three (R. 29-30).

Other instances of somewhat similar activity were related of the City of Jackson, Michigan (F. 30) and Cleveland, Ohio (R. 31).

The Order has associate members. The National Chapter sets no limits on their number, but this is left to the Local Chapters, and in one chapter at the little city of Niles, Michigan, there are thirteen regular members and one hundred associate members (R. 40-41). Associate members are selected from citizens of good standing who desire to cooperate with the police who file an application recommended by three members (R. 34-35). These petitions are investigated. The associate members are elected by the whole lodge (R. 34-35) via ballot box, all the members present having a vote (R. 43-44). An associate member is automatically dropped from membership upon conviction of any law infraction (R. 37).

Associate members pay a membership fee ranging from $5.00 to $25.00, depending upon the local lodge (R. 42-43). When this is paid he gets a membership card (R. 36) and a small emblem which he may carry on the license plate

of his automobile (R. 35-36). The Order desires that he display this emblem (R. 44-45).

No extra charge is made for the emblem (R. 42) though it sells for $1.50 (R. 36). Each emblem is numbered (R. 44), it remains the property of the lodge (R. 40) and if one is lost or stolen an effort is made to recover it (R. 44).

No discrimination is made in law enforcement in favor of associate members—in fact more is expected of them in that regard than of citizens who are not members (R. 39-40). There is no interchange among lodges of membership rolls—the membership list is found only in the records of the lodge (R. 44).

III.

SPECIFICATION OF ERRORS

Petitioners intend to urge the following errors:

1. That the resolution adopted by defendants August 13, 1943, and their threats to enforce it are arbitrary and unreasonable and constitute a threat to invade plaintiffs' constitutional rights under,

   (a) The Due Process Clause of the Fourteenth Amendment to the Constitution, and

   (b) Equal Protection of the Laws clause of the Fourteenth Amendment to the Constitution.

These questions are raised in the bill of complaint, were orally argued in the trial court, and presented to the Supreme Court of the State of Michigan in the reasons and grounds of appeal, or indicated by the statement of facts above.

IV.

GROUNDS OF JURISDICTION

1. It need not be argued, we think, that the question of whether or not plaintiffs' rights under the Due Process Clause and the Equal Protection of the Laws clause of the Fourteenth Amendment are Federal questions. For the convenience of the court Section 1 of that amendment is as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. As alleged in the petition, since this case presents questions "where any title, right, privilege or immunity is specifically claimed—under the Constitution," jurisdiction is conferred on this court by the amendment to the Judicial Code, the act of February, 1925, Chapter 229, 43 Sta. 936, Sec. 237 (b):

> "It shall be competent for the Supreme Court, by certiorari to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States, or where is drawn in question the validity of a statute of any State

on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph."

3. As to jurisdictional time for filing the petition, under the terms of the aforesaid act of February 13, 1925, Sec. 8 (a) a petition for writ of certiorari to the highest court of any State may be filed within three months of final determination in that court. That court entered its order affirming the decree of the trial court June 30, 1943. An application for rehearing was denied September 7, 1943.

Prior to the expiration of three months period after denial of the motion for rehearing, these petitioners filed in this court a petition to extend the time. An order thereon was entered December 2, 1943, extending the time to and including February 5, 1944, and a copy of this order is attached to the petition. Such extension of time is authorized by Section 8 (a) of the act of February 13, 1925, aforesaid.

In this situation it seems clear that this court has jurisdiction to issue the writ prayed.

V.

BRIEF OF ARGUMENT

1. The resolution of August 13, 1941, adopted by defendants, forbids two classes of members of Fraternal Order of Police, (1) Associate members, and (2) Police Officers over the rank of sergeant. Membership of Police Officers below the rank of sergeant is permitted. There is no reasonable basis for such classification, therefore the threat to enforce the resolution is a denial of equal protection of the laws as guaranteed by Section 1 of the 14th Amendment.

2. The right to organize and solicit members in, and to become members of, Fraternal Order of Police, and to remain so, are rights protected by the Due Process clause of the 14th Amendment. Plaintiffs cannot be deprived of these rights without due process of law. The resolution adopted by defendants on August 13, 1941, is unreasonable, and the resulting infringement upon the rights of plaintiff is contrary to due process of law.

VI.

ARGUMENT

A. THE RESOLUTION ADOPTED AUGUST 13, 1941 BY DEFENDANTS IS ARBITRARY AND UNREASONABLE.

The resolution, if enforced, would do two things: (1) It would prohibit any associate memberships in the Fraternal Order of Police, and (2) it would prohibit membership of any Police Officer above the rank of sergeant. The penalty inflicted for its violation can be dismissal or other form of disciplinary action.

The effect is to outlaw such memberships, thus impeding solicitation of such members by those who are already members of the Order and preventing retention of membership of citizens and police officers.

The right to join any fraternal order, religious order, political organization, educational group, etc., is generally freely conceded. Though there is little mention of constitutional provisions in the opinion of the Michigan Supreme Court, these rights stem from the constitution. The obvious reason assigned by those who support the resolution adopted by defendants in their attempts to sustain it is that the prohibited memberships tend to be in opposition to the duties of the office of policeman. If this contention is not sustained in fact, then the resolution is arbitrary and unreasonable.

The record discloses no facts which would indicate that any membership in the order is contrary to a policeman's duty. The aims and purposes of the organization and its activities are clearly shown. We think it obvious that they are in furtherance of police efforts rather than in opposition thereto.

We venture to say that defendants would offer no objection to any officer of the Police Department of the city of Lansing in becoming members of the Masonic Lodge or of the Knights of Columbus, merely to mention by way of example two well known fraternal orders. But membership in those lodges offers the same opportunities for discrimination in law enforcement as does membership in the Fraternal Order of Police. If, to use the example sug-

gested by counsel for defendants, a police officer of Lansing saw a fellow member of his lodge, whatever lodge it might be, speeding down the highway in excess of the speed limit, there would be the same temptation to overlook the infraction that there would be if membership in Fraternal Order of Police were involved. In other words this resolution constitutes a discrimination against fraternal orders which has no basis in fact or reason.

To impute to police officers the juvenile and reckless attitude of mind that would cause them to discriminate in favor of a fellow lodge member in such respect is of course unwarranted of itself. To do so would be to deprive them of their right to become or remain a member of any fraternal organization. The mere fact that Fraternal Order of Police composed entirely of police officers and associate members does not afford any greater opportunity for discrimination in the matter of law enforcement.

To divide the police officers into two groups, those above the rank of sergeant in one, to which the penalty applies, and those of or below that rank to which they do not apply, is absolutely no basis in reason or fact. It would seem far wiser, if there were anything dangerous about this Order, to permit the higher ranking and older officers who have proven their devotion to duty by such experience that brought them to their rank, to become members, for they could then be aware of the workings of the Order from the inside.

Nor is there any reason for the prohibition of associate membership. The association of members of the community of high standing, whose petitions are investigated and who are chosen by vote of the whole lodge cannot be aimed at creating any organization inimicable to good law enforcement. We think the scheme effective to the promotion of good police work. There is no reason in the prohibition.

The resolution reflects nothing but the over-anxiety of defendants. It harps back to ancient days when, at common law, a labor union was a criminal conspiracy. We have gone far from that day, and we feel that this court will say so, as they have said in effect before. Of course this order is in no sense a labor union, but the analogy is present in this respect.

To say that a police department is a semi-military organization, and reason from that to the conclusion arrived at by the Michigan Supreme Court, begs the question. The members of the Police Department are individuals, and are possessed of all the rights of such. Unless the record shows something in the organization which is in opposition to their duties, the resolution prohibiting their free membership and participation in this Order is unreasonable. The record is utterly devoid of anything of this kind —in fact it shows the exact contrary to be the case.

We think the resolution of defendants arbitrary and unreasonable.

B. THERE IS A THREATENED INVASION OF PLAINTIFFS' RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT TO THE CONSTITUTION.

The resolution being unreasonable, this argument is substantially complete. Deprivation of rights by unreasonable and arbitrary power by the State or any subdivision thereof has always been recognized as a case for the application of the due process clause.

We have devoted no effort to show what authority defendants have under the Lansing City Charter, for we deem that irrelevant. If plaintiffs are deprived of rights under

color of authority of the State or any of its subdivisions, by an unreasonable and arbitrary regulation, the due process clause intervenes its protection.

Home Telephone, etc. Co. v. Los Angeles, 227 U. S. 278, 33 Sup. Ct. 312, 57 Law Ed. 510.

A case more in point on the facts is *People v. City of Chicago,* 199 Ill. App. 362. In that case the Board of Education of the city of Chicago had adopted a rule prohibiting membership of teachers in a labor union under penalty of discharge. The court held that such regulation violated both constitutional clauses here invoked.

The force of this decision is possibly marred somewhat by the fact that it was reversed by a higher court, in 278 Ill. 318, but it was upon totally different grounds. We venture to say that most American courts would now adhere to the rule laid down in the original case.

C. THERE IS A THREATENED INVASION OF PLAINTIFFS' RIGHTS UNDER THE EQUAL PROTECTION OF THE LAWS CLAUSE OF THE FOURTEENTH AMENDMENT.

We shall devote no effort to establish accepted principles of elementary constitutional law. We believe it to be accepted that if by a regulation promulgated by any subdivision of the State, penalties are applied to one class and not to another, unless there is some reasonable basis for the discrimination, the regulation is void. We have devoted some effort to show that there is no reasonable basis for the discriminations made by the resolution adopted by defendants. It applies to associate members of Fraternal Order of Police, and to all Lansing police officers above the

rank of sergeant, but to no other classes. There is no basis for this classification as we have indicated above.

See *People v. City of Chicago (supra).*

VII.

CONCLUSION

The line which divides the private rights of a police officer from duties which he owes the public as a police officer calls for definition in this case. It affects the existence and growth of a national organization. The full extent of this organization is not disclosed by the record, but some idea of it may be gained by the facts that are disclosed,—that the national office is in Pittsburgh, that there are 12 chapters in Michigan, in 24 cities of that state, and mention is made of one Ohio chapter in Cleveland. The Michigan Supreme Court has ruled that police officers in becoming or remaining members of such organization as Fraternal Order of Police are on the wrong side of the line. We believe this contrary to principles laid down in the decisions of this court.

We ask that the Writ issue as prayed.

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